

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

TAMMY JONES

Petitioner - Appellee

-vs-

TOM BAYER

Respondent - Appellant

JUDGES:

Hon. W. Scott. Gwin, P.J.
Hon. John W. Wise, J.
Hon. Craig R. Baldwin, J.

Case No. 2014 AP 03 0010

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Tuscarawas County
Court of Common Pleas, Case No.
2013 PO 12 0916

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

November 25, 2014

APPEARANCES:

For Plaintiff-Appellee

JAMES ONG
201 North Main Street
Uhrichsville, OH 44683

For Defendant-Appellant

RICHARD DRAKE
303 Courtyard Centre
116 Cleveland Ave. NW
Canton, OH 44702

Baldwin, J.

{¶1} Appellant Tom Bayer appeals a judgment of the Tuscarawas County Common Pleas Court granting appellee Tammy Jones a civil protection stalking order pursuant to R.C. 2903.214.

STATEMENT OF FACTS AND CASE

{¶2} Appellant and his wife are fans of Randy Velez, a local singer. Appellee met appellant at a Velez concert in December of 2012. Appellee and her friends regularly attended Velez's concerts, and the parties would at times save seats for each other.

{¶3} On December 19, 2013, appellee and her friends were unable to save seats for appellant and his wife at Tlaquepaque, a local restaurant where Velez was performing. Appellant became angry and came to appellee's table several times, calling appellee and her friends vulgar names, and telling them to watch their backs. While performing, Velez could see appellant continue to go to appellee's table, becoming more aggressive as time went on. Velez told appellant to leave appellee and her friends alone, but appellant would not comply.

{¶4} Two days later on December 21, 2013, Velez performed at the Lincoln Theater in Massillon. Appellee went out to the lobby to find her friend, Nicole Busby, to relay a request from their friend Holly. Nicole was talking to appellant, who had backed Nicole up against a wall. When appellant saw appellee, he told her this was no concern of hers. Appellee relayed Holly's message to Nicole, and turned to go back into the theater. Appellant said to her, "It ain't beneath me to deck you." Appellee became

afraid of appellant because she had seen his explosive temper, even about matters that did not involve him, and had noted that he pursued people he had problems with rather than staying away from him.

{¶5} Appellee filed a petition for a civil protection stalking order against appellant. The case proceeded to a hearing in the Tuscarawas County Common Pleas Court. At the hearing, both Randy Velez and his wife testified that appellant has been belligerent and disrespectful to other fans at their shows, especially to younger women. The trial court granted the civil protection order for a period of five years. Appellant assigns a single error on appeal:

{¶6} “THE TRIAL COURT ERRED IN GRANTING THE PETITIONER’S REQUEST FOR A CIVIL PROTECTION ORDER.”

{¶7} Appellant argues that the court erred in granting the request for a civil protection stalking order because the evidence did not establish that he engaged in a pattern of conduct. He argues that appellee testified to only one incident wherein appellant threatened her.

{¶8} The decision whether or not to grant a civil protection order is well within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *Bucksbaum v. Mitchell*, 5th Dist. Richland No. 2003-CA-0070, 2004-Ohio-2233. An abuse of discretion connotes more than a mere error of law or judgment; rather, it implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140(1983).

{¶9} A judgment supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being

against the manifest weight of the evidence *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus (1978). As the trier of fact is in the best position to view the witnesses and their demeanor, in making a determination that a judgment is against the manifest weight of the evidence, this Court must indulge every reasonable presumption in favor of the lower court's judgment and findings of fact. *Shemo v. Mayfield Hts.*, 88 Ohio St.3d 7, 10, 722 N.E.2d 1018 (2000).

{¶10} The court granted appellant's petition for a civil protection stalking order pursuant to R.C. 2903.214(C)(1), which states:

{¶11} "(C) A person may seek relief under this section for the person, or any parent or adult household member may seek relief under this section on behalf of any other family or household member, by filing a petition with the court. The petition shall contain or state all of the following:

{¶12} An allegation that the respondent is eighteen years of age or older and engaged in a violation of section 2903.211 of the Revised Code against the person to be protected by the protection order or committed a sexually oriented offense against the person to be protected by the protection order, including a description of the nature and extent of the violation[.]"

{¶13} R.C. 2903.211(A)(1) prohibits menacing by stalking: "(A)(1) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person." R.C. 2903.211(D)(1) defines pattern of conduct as "two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents."

{¶14} Appellant argues that the evidence does not reflect any threat directed toward appellee on December 19, 2013, at Tlaquepaque. Appellee testified that appellant came to their table three times that night, calling them names and saying, “watch your back.” Velez testified that while performing, he saw appellant go to appellee’s table several times, becoming more aggressive and calling appellee and her friends names. He noted that appellant would not comply when the ladies asked him to leave, and would not comply with Velez’s request to leave them alone. Nicole Busby also testified that appellant screamed at them for not saving seats, called them names, and used vulgar language toward them. The trial court clearly believed appellee’s testimony that appellant threatened her and her friends by saying, “watch your back,” and the other testimony of appellant’s behavior corroborates that appellant was behaving in an aggressive and threatening manner, whether or not any other witness heard the threat.

{¶15} Further, appellee testified that on December 21, 2013, appellant said to her at the Lincoln Theater, “It ain’t beneath me to deck you.” These two incidents meet the definition of a pattern of conduct as defined by R.C. 2903.211(D)(1), and the trial court did not abuse its discretion in issuing the civil protection order.

{¶16} The assignment of error is overruled. The judgment of the Tuscarawas County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Gwin, P.J. and

Wise, J. concur.